

By: Campbell

S.B. No. 1401

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of banks and trust companies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 31.002(a), Finance Code, is amended by adding Subdivision (55-a) to read as follows:

(55-a) "Third-party service provider" means a person, company, or other legal entity that:

(A) provides data processing services;

(B) performs activities in support of the provision of financial services, including lending, transferring funds, fiduciary activities, trading activities, and deposit-taking activities;

(C) provides Internet-related services, including web services, processing electronic bill payments, developing and maintaining mobile applications, system and software development and maintenance, and security monitoring; or

(D) performs activities relating to the business of banking.

SECTION 2. Sections 31.107(a) and (b), Finance Code, are amended to read as follows:

(a) The banking commissioner may regulate and examine, to the same extent as if the services or activities were performed by a state bank on its own premises:

(1) the activities of a state bank affiliate; and

1           (2) the [~~performance of data processing, electronic~~  
2 ~~fund transfers, or other bank~~] services or activities of a  
3 third-party service provider that a state bank or state bank  
4 affiliate has contracted for or otherwise arranged to be performed  
5 on behalf of the [~~a~~] state bank or state bank affiliate [~~by a~~  
6 ~~third-party contractor, other than a national bank~~].

7           (b) The banking commissioner may collect a fee from an  
8 examined third-party service provider [~~contractor~~] or affiliate in  
9 connection with each examination to cover the cost of the  
10 examination or may collect that fee from the state banks that use  
11 the examined third-party service provider [~~contractor~~].

12           SECTION 3. Section 31.301(a), Finance Code, is amended to  
13 read as follows:

14           (a) Except as expressly provided otherwise by this  
15 subtitle, Chapter 11 or 12, or a rule adopted under this subtitle,  
16 the following are confidential and may not be disclosed by the  
17 banking commissioner or an employee of the department:

18           (1) information directly or indirectly obtained by the  
19 department in any manner, including an application or examination,  
20 concerning the financial condition or business affairs of a  
21 financial institution, [~~or~~] a present, former, or prospective  
22 shareholder, officer, director, or affiliate of a financial  
23 institution, or a third-party service provider of a financial  
24 institution or its affiliate, other than information in a published  
25 statement or in the public portion of a call report or profit and  
26 loss statement; and

27           (2) all related files and records of the department.

SECTION 4. Subchapter D, Chapter 31, Finance Code, is amended by adding Section 31.3015 to read as follows:

Sec. 31.3015. DISCLOSURE TO STATE BANKS. The banking commissioner may disclose to a state bank information about an affiliate or third-party service provider of the state bank.

SECTION 5. Section 33.106, Finance Code, is amended to read as follows:

Sec. 33.106. OFFICERS. (a) The board shall annually appoint the officers of the bank, who serve at the will of the board. Unless the banking commissioner consents otherwise in writing, a person may not serve as an officer of the state bank if:

(1) the person is the subject of an order described by Section 35.007(a); or

(2) the person has been convicted of a felony.

(b) The bank must have a principal executive officer primarily responsible for the execution of board policies and operation of the bank and an officer responsible for the maintenance and storage of all corporate books and records of the bank and for required attestation of signatures. Those positions may not be held by the same person. The board may appoint other officers of the bank as the board considers necessary.

SECTION 6. Section 35.007(a), Finance Code, is amended to read as follows:

(a) Except as otherwise provided by law, without the prior written approval of the banking commissioner, a person subject to a final and enforceable removal or prohibition order issued by the banking commissioner, or by another state, federal, or foreign

financial institution regulatory agency, may not:

(1) serve as a director, officer, or employee of a state bank, state ~~[or]~~ trust company, or holding company of a state bank, or as a director, officer, or employee with financial responsibility of any other entity chartered, registered, permitted, or licensed by the banking commissioner under the laws of this state;

(2) directly or indirectly participate in any manner in the management of such an entity;

(3) directly or indirectly vote for a director of such an entity; or

(4) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote a proxy, consent, or authorization with respect to voting rights in such an entity.

SECTION 7. Section 35.101, Finance Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) Subject to Subsection (d), a ~~[A]~~ supervisor serves until the earlier of:

(1) the expiration of the period stated in the order of supervision; or

(2) the date the banking commissioner determines that the requirements for abatement of the order have been satisfied.

(d) The banking commissioner may terminate an order of supervision at any time.

SECTION 8. Section 35.206(a), Finance Code, is amended to read as follows:

(a) On certification by the banking commissioner, a book, record, paper, or document produced or testimony taken as provided by Section 35.203 [~~35.204~~] and held by the department is admissible as evidence in any case without prior proof of its correctness and without other proof. The certified book, record, document, or paper, or a certified copy, is prima facie evidence of the facts it contains.

SECTION 9. Section 181.002(a), Finance Code, is amended by adding Subdivision (47-b) and amending Subdivision (49) to read as follows:

(47-b) "Third-party service provider" means a person, company, or other legal entity that:

(A) provides data processing services;

(B) performs activities in support of the provision of financial services, including lending, transferring funds, fiduciary activities, trading activities, and deposit-taking activities;

(C) provides Internet-related services, including web services, processing electronic bill payments, developing and maintaining mobile applications, system and software development and maintenance, and security monitoring; or

(D) performs activities relating to the trust business.

(49) "Trust business" means the business of a company holding itself out to the public as a fiduciary for hire or compensation to hold or administer accounts. The term includes:

(A) the business of a trustee or custodian of an

1 individual retirement account described by Section 408(a),  
2 Internal Revenue Code of 1986; and

3 (B) the business of an administrator or servicer  
4 of individual retirement accounts described by Section 408(a),  
5 Internal Revenue Code of 1986, who possesses or controls any  
6 assets, including cash, of those accounts and who makes the  
7 administrator's or servicer's services available to the public for  
8 hire or compensation.

9 SECTION 10. Section 181.106, Finance Code, is amended to  
10 read as follows:

11 Sec. 181.106. REGULATION AND EXAMINATION OF RELATED  
12 ENTITIES. (a) The banking commissioner may regulate and examine,  
13 to the same extent as if the services or activities were performed  
14 by a state trust company on its own premises:

15 (1) the activities of a state trust company affiliate;  
16 and

17 (2) the ~~[performance of data processing, electronic~~  
18 ~~fund transfers, or other]~~ services or activities of a third-party  
19 service provider that a state trust company or state trust company  
20 affiliate has contracted for or otherwise arranged to be performed  
21 on behalf of the [a] state trust company or state trust company  
22 affiliate [by a third-party contractor].

23 (b) The banking commissioner may collect a fee from an  
24 examined third-party service provider or affiliate in connection  
25 with each examination [the state trust company] to cover the cost of  
26 the examination or may collect that fee from the state trust  
27 companies that use the examined third-party service provider.

SECTION 11. Section 181.301(a), Finance Code, is amended to read as follows:

(a) Except as expressly provided otherwise by this subtitle or a rule adopted under this subtitle [~~Section 181.003(a)(1)~~], the following are confidential and may not be disclosed by the banking commissioner or an employee of the department:

(1) information directly or indirectly obtained by the department in any manner, including through an application or examination, concerning the financial condition or business affairs of a state trust company, ~~[or]~~ a present, former, or prospective shareholder, participant, officer, director, manager, or affiliate of the state trust company, or a third-party service provider of the state trust company or its affiliate, other than the public portions of a report of condition or income statement; and

(2) each related file or record of the department.

SECTION 12. Subchapter D, Chapter 181, Finance Code, is amended by adding Section 181.3015 to read as follows:

Sec. 181.3015. DISCLOSURE TO STATE TRUST COMPANIES. The banking commissioner may disclose to a state trust company information about an affiliate or third-party service provider of the state trust company.

SECTION 13. Section 182.021, Finance Code, is amended to read as follows:

Sec. 182.021. ACTIVITIES NOT REQUIRING CHARTER. Subject to Subchapter C, Chapter 187, a company does not engage in the trust business in a manner requiring a state charter by:

(1) acting in a manner authorized by law and in the

1 scope of authority as an agent of a trust institution;

2 (2) rendering a service customarily performed as an  
3 attorney in a manner approved and authorized by the Supreme Court of  
4 Texas or State Bar of Texas;

5 (3) acting as trustee under a deed of trust made only  
6 as security for the payment of money or for the performance of  
7 another act;

8 (4) conducting business as a trust institution if the  
9 exercise of fiduciary powers in this state by the trust institution  
10 is not otherwise prohibited by law;

11 (5) engaging in a business regulated by the Office of  
12 Consumer Credit Commissioner, except as limited by rules adopted by  
13 the finance commission;

14 (6) receiving and distributing rents and proceeds of  
15 sale as a licensed real estate broker on behalf of a principal in a  
16 manner authorized by the Texas Real Estate Commission;

17 (7) engaging in a securities transaction or providing  
18 an investment advisory service as a licensed and registered dealer,  
19 salesman, or advisor to the extent that the activity is regulated by  
20 the State Securities Board or the Securities and Exchange  
21 Commission;

22 (8) engaging in the sale and administration of an  
23 insurance product by an insurance company or agent authorized or  
24 licensed by the Texas Department of Insurance to the extent that the  
25 activity is regulated by the Texas Department of Insurance;

26 (9) engaging in the lawful sale of prepaid funeral  
27 benefits under a permit issued by the banking commissioner under

Chapter 154;

(10) engaging in the lawful business of a perpetual care cemetery corporation under Chapter 712, Health and Safety Code;

(11) engaging as a principal in the money services business under a license issued by the banking commissioner under Chapter 151;

(12) acting as trustee under a voting trust as provided by Section 6.251, Business Organizations Code;

(13) acting as trustee by a public, private, or independent institution of higher education or a university system, as defined by Section 61.003, Education Code, including an affiliated foundation or corporation of such an institution or system acting as trustee as provided by the Education Code;

(14) engaging in another activity expressly excluded from the application of this subtitle by rule of the finance commission;

(15) rendering services customarily performed by a certified accountant in a manner authorized by the Texas State Board of Public Accountancy;

(16) serving as trustee of a charitable trust as provided by Section 2.106, Business Organizations Code;

(17) performing escrow or settlement services if licensed or authorized under Title 11, Insurance Code;

(18) acting as a qualified intermediary in a tax deferred exchange under Section 1031, Internal Revenue Code of 1986, and applicable regulations; [~~or~~]

1           (19) providing permitted services at a trust  
2 representative office established in this state pursuant to  
3 Subchapter C, Chapter 187; or

4           (20) acting as a trustee or custodian approved by the  
5 Internal Revenue Service under 26 C.F.R. Section 1.408-2(e) of an  
6 individual retirement account described by Section 408(a),  
7 Internal Revenue Code of 1986.

8           SECTION 14. Section 183.106(a), Finance Code, is amended to  
9 read as follows:

10          (a) The board shall annually appoint the officers of the  
11 state trust company, who serve at the will of the board. Unless the  
12 banking commissioner consents otherwise in writing, a person may  
13 not serve as an officer of a state trust company if:

14                 (1) the person is the subject of an order described by  
15 Section 185.007(a);

16                 (2) the person has been convicted of a felony; or

17                 (3) the person has violated, with respect to a trust  
18 under which the state trust company has fiduciary responsibility,  
19 Section 113.052 or 113.053(a), Property Code, relating to loan of  
20 trust funds and purchase or sale of trust property by the trustee,  
21 and the violation has not been corrected.

22          SECTION 15. Section 185.007(a), Finance Code, is amended to  
23 read as follows:

24          (a) Except as provided by other law, without the prior  
25 written approval of the banking commissioner, a person subject to a  
26 final and enforceable removal or prohibition order issued by the  
27 banking commissioner, or by another state, federal, or foreign

financial institution regulatory agency, may not:

(1) serve as a director, officer, or employee of a state trust company, ~~or~~ state bank, or holding company of a state bank, or as a director, officer, or employee with financial responsibility of any other entity chartered, registered, permitted, or licensed by the banking commissioner under the laws of this state while the order is in effect;

(2) directly or indirectly participate in any manner in the management of such an entity;

(3) directly or indirectly vote for a director of such an entity; or

(4) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote a proxy, consent, or authorization with respect to voting rights in such an entity.

SECTION 16. Section 185.101, Finance Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) Subject to Subsection (d), the ~~The~~ supervisor serves until the earlier of:

(1) the expiration of the period stated in the order of supervision; or

(2) the date the banking commissioner determines that the requirements for abatement of the order have been satisfied.

(d) The banking commissioner may terminate an order of supervision at any time.

SECTION 17. This Act takes effect September 1, 2017.